

HOUSE BILL NO. 505

INTRODUCED BY GALLUS, P. CLARK, COHENOUR, COONEY, DICKENSON, FACEY, FRANKLIN,
FUCHS, GIBSON, GOLIE, KAUFMANN, MCGEE, TASH, TESTER, TROPILA, WANZENRIED, YOUNKIN

A BILL FOR AN ACT ENTITLED: "AN ACT DEFINING "POND" AND "NONCONSUMPTIVE USE" IN THE
SURFACE AND GROUND WATER LAWS; REVISING THE DEFINITION OF "NONCONSUMPTIVE USE"
USED IN THE BASIN CLOSURE LAWS; PROVIDING THAT A USE OF WATER FOR A POND IS NOT A
NONCONSUMPTIVE USE; AND AMENDING SECTIONS 85-2-102, 85-2-329, 85-2-340, AND 85-2-342, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 85-2-102, MCA, is amended to read:

"85-2-102. (Temporary) Definitions. Unless the context requires otherwise, in this chapter, the
following definitions apply:

(1) "Appropriate" means:

(a) to divert, impound, or withdraw (including by stock for stock water) a quantity of water;

(b) in the case of a public agency, to reserve water in accordance with 85-2-316;

(c) in the case of the department of fish, wildlife, and parks, to lease water in accordance with 85-2-436;

or

(d) in the Upper Clark Fork River basin, to maintain and enhance streamflows to benefit the fishery
resource in accordance with 85-2-439.

(2) "Beneficial use", unless otherwise provided, means:

(a) a use of water for the benefit of the appropriator, other persons, or the public, including but not
limited to agricultural (including stock water), domestic, fish and wildlife, industrial, irrigation, mining, municipal,
power, and recreational uses;

(b) a use of water appropriated by the department for the state water leasing program under 85-2-141
and of water leased under a valid lease issued by the department under 85-2-141;

(c) a use of water by the department of fish, wildlife, and parks pursuant to a lease authorized under
85-2-436; or

(d) a use of water to maintain and enhance streamflows to benefit the fishery resource in the Upper

Clark Fork River basin as part of the Upper Clark Fork River basin instream flow pilot program authorized under 85-2-439.

(3) "Certificate" means a certificate of water right issued by the department.

(4) "Change in appropriation right" means a change in the place of diversion, the place of use, the purpose of use, or the place of storage.

(5) "Commission" means the fish, wildlife, and parks commission provided for in 2-15-3402.

(6) "Correct and complete" means that the information required to be submitted conforms to the standard of substantial credible information and that all of the necessary parts of the form requiring the information have been filled in with the required information.

(7) "Declaration" means the declaration of an existing right filed with the department under section 8, Chapter 452, Laws of 1973.

(8) "Department" means the department of natural resources and conservation provided for in Title 2, chapter 15, part 33.

(9) "Developed spring" means any artificial opening or excavation in the ground, however made, including any physical alteration at the point of discharge regardless of whether it results in any increase in the yield of ground water, from which ground water is sought or can be obtained or through which it flows under natural pressures or is artificially withdrawn.

(10) "Existing right" or "existing water right" means a right to the use of water that would be protected under the law as it existed prior to July 1, 1973. The term includes federal non-Indian and Indian reserved water rights created under federal law and water rights created under state law.

(11) "Ground water" means any water that is beneath the ground surface.

(12) "Late claim" means a claim to an existing right forfeited pursuant to the conclusive presumption of abandonment under 85-2-226.

(13) (a) "Nonconsumptive use" means a beneficial use of water that does not cause a reduction in the source of supply and in which substantially all of the water returns without delay to the source of supply, causing little or no disruption in stream conditions.

(b) The term does not include a use of water for a pond.

~~(13)~~(14) "Permit" means the permit to appropriate issued by the department under 85-2-301 through 85-2-303 and 85-2-306 through 85-2-314.

~~(14)~~(15) "Person" means an individual, association, partnership, corporation, state agency, political

subdivision, the United States or any agency of the United States, or any other entity.

~~(15)(16)~~ (a) "Political subdivision" means any county, incorporated city or town, public corporation, or district created pursuant to state law or other public body of the state empowered to appropriate water.

~~(b)~~ The term does not mean a private corporation, association, or group.

~~(17)~~ (A) "Pond" means a ~~lake-like~~ body of water that is created:

~~(a)(i)~~ by a diversion of SURFACE water; and

~~(b)(ii)~~ by IMPOUNDMENT OF WATER BY artificial means ~~or~~, INCLUDING excavation.

~~(B) THE TERM DOES NOT INCLUDE A BODY OF WATER THAT IS USED FOR WASTE TREATMENT, WASTE REMEDIATION, MITIGATION OF WETLAND LOSS IN COMPLIANCE WITH APPLICABLE LAW, MUNICIPAL USE, STOCK USE, OR STORAGE OF WATER.~~

~~(16)(18)~~ "Salvage" means to make water available for beneficial use from an existing valid appropriation through application of water-saving methods.

~~(17)(19)~~ "State water reservation" means a water right created under state law after July 1, 1973, that reserves water for existing or future beneficial uses or that maintains a minimum flow, level, or quality of water throughout the year or at periods or for defined lengths of time.

~~(18)(20)~~ "Substantial credible information" means probable, believable facts sufficient to support a reasonable legal theory upon which the department should proceed with the action requested by the person providing the information.

~~(19)(21)~~ "Waste" means the unreasonable loss of water through the design or negligent operation of an appropriation or water distribution facility or the application of water to anything but a beneficial use.

~~(20)(22)~~ "Water" means all water of the state, surface and subsurface, regardless of its character or manner of occurrence, including but not limited to geothermal water, diffuse surface water, and sewage effluent.

~~(21)(23)~~ "Water division" means a drainage basin as defined in 3-7-102.

~~(22)(24)~~ "Water judge" means a judge as provided for in Title 3, chapter 7.

~~(23)(25)~~ "Water master" means a master as provided for in Title 3, chapter 7.

~~(24)(26)~~ (a) "Watercourse" means any naturally occurring stream or river from which water is diverted for beneficial uses.

~~(b)~~ ~~†~~ The term does not include ditches, culverts, or other constructed waterways.

~~(25)(27)~~ "Well" means any artificial opening or excavation in the ground, however made, by which ground water is sought or can be obtained or through which it flows under natural pressures or is artificially

1 withdrawn. (Terminates June 30, 2005--sec. 14, Ch. 487, L. 1995.)

2 **85-2-102. (Effective July 1, 2005) Definitions.** Unless the context requires otherwise, in this chapter,
3 the following definitions apply:

4 (1) "Appropriate" means:

5 (a) to divert, impound, or withdraw (including by stock for stock water) a quantity of water;

6 (b) in the case of a public agency, to reserve water in accordance with 85-2-316; or

7 (c) in the case of the department of fish, wildlife, and parks, to lease water in accordance with 85-2-436.

8 (2) "Beneficial use", unless otherwise provided, means:

9 (a) a use of water for the benefit of the appropriator, other persons, or the public, including but not
10 limited to agricultural (including stock water), domestic, fish and wildlife, industrial, irrigation, mining, municipal,
11 power, and recreational uses;

12 (b) a use of water appropriated by the department for the state water leasing program under 85-2-141
13 and of water leased under a valid lease issued by the department under 85-2-141; and

14 (c) a use of water by the department of fish, wildlife, and parks pursuant to a lease authorized under
15 85-2-436.

16 (3) "Certificate" means a certificate of water right issued by the department.

17 (4) "Change in appropriation right" means a change in the place of diversion, the place of use, the
18 purpose of use, or the place of storage.

19 (5) "Commission" means the fish, wildlife, and parks commission provided for in 2-15-3402.

20 (6) "Correct and complete" means that the information required to be submitted conforms to the
21 standard of substantial credible information and that all of the necessary parts of the form requiring the
22 information have been filled in with the required information.

23 (7) "Declaration" means the declaration of an existing right filed with the department under section 8,
24 Chapter 452, Laws of 1973.

25 (8) "Department" means the department of natural resources and conservation provided for in Title 2,
26 chapter 15, part 33.

27 (9) "Developed spring" means any artificial opening or excavation in the ground, however made,
28 including any physical alteration at the point of discharge regardless of whether it results in any increase in the
29 yield of ground water, from which ground water is sought or can be obtained or through which it flows under
30 natural pressures or is artificially withdrawn.

(10) "Existing right" or "existing water right" means a right to the use of water that would be protected under the law as it existed prior to July 1, 1973. The term includes federal non-Indian and Indian reserved water rights created under federal law and water rights created under state law.

(11) "Ground water" means any water that is beneath the ground surface.

(12) "Late claim" means a claim to an existing right forfeited pursuant to the conclusive presumption of abandonment under 85-2-226.

(13) (a) "Nonconsumptive use" means a beneficial use of water that does not cause a reduction in the source of supply and in which substantially all of the water returns without delay to the source of supply, causing little or no disruption in stream conditions.

(b) The term does not include a use of water for a pond.

~~(13)~~(14) "Permit" means the permit to appropriate issued by the department under 85-2-301 through 85-2-303 and 85-2-306 through 85-2-314.

~~(14)~~(15) "Person" means an individual, association, partnership, corporation, state agency, political subdivision, the United States or any agency of the United States, or any other entity.

~~(15)~~(16) (a) "Political subdivision" means any county, incorporated city or town, public corporation, or district created pursuant to state law or other public body of the state empowered to appropriate water.

(b) The term does not mean a private corporation, association, or group.

(17) (A) "Pond" means a lake-like body of water that is created:

~~(a)~~(i) by a diversion of SURFACE water; and

~~(b)~~(ii) by IMPOUNDMENT OF WATER BY artificial means or, INCLUDING excavation.

(B) THE TERM DOES NOT INCLUDE A BODY OF WATER THAT IS USED FOR WASTE TREATMENT, WASTE REMEDIATION, MITIGATION OF WETLAND LOSS IN COMPLIANCE WITH APPLICABLE LAW, MUNICIPAL USE, STOCK USE, OR STORAGE OF WATER.

~~(16)~~(18) "Salvage" means to make water available for beneficial use from an existing valid appropriation through application of water-saving methods.

~~(17)~~(19) "State water reservation" means a water right created under state law after July 1, 1973, that reserves water for existing or future beneficial uses or that maintains a minimum flow, level, or quality of water throughout the year or at periods or for defined lengths of time.

~~(18)~~(20) "Substantial credible information" means probable, believable facts sufficient to support a reasonable legal theory upon which the department should proceed with the action requested by the person

1 providing the information.

2 ~~(19)~~(21) "Waste" means the unreasonable loss of water through the design or negligent operation of an
3 appropriation or water distribution facility or the application of water to anything but a beneficial use.

4 ~~(20)~~(22) "Water" means all water of the state, surface and subsurface, regardless of its character or
5 manner of occurrence, including but not limited to geothermal water, diffuse surface water, and sewage effluent.

6 ~~(24)~~(23) "Water division" means a drainage basin as defined in 3-7-102.

7 ~~(22)~~(24) "Water judge" means a judge as provided for in Title 3, chapter 7.

8 ~~(23)~~(25) "Water master" means a master as provided for in Title 3, chapter 7.

9 ~~(24)~~(26) (a) "Watercourse" means any naturally occurring stream or river from which water is diverted
10 for beneficial uses.

11 (b) ~~†~~ The term does not include ditches, culverts, or other constructed waterways.

12 ~~(25)~~(27) "Well" means any artificial opening or excavation in the ground, however made, by which
13 ground water is sought or can be obtained or through which it flows under natural pressures or is artificially
14 withdrawn. (Terminates June 30, 2009--sec. 9, Ch. 123, L. 1999.)

15 **85-2-102. (Effective July 1, 2009) Definitions.** Unless the context requires otherwise, in this chapter,
16 the following definitions apply:

17 (1) "Appropriate" means:

18 (a) to divert, impound, or withdraw (including by stock for stock water) a quantity of water; or

19 (b) in the case of a public agency, to reserve water in accordance with 85-2-316.

20 (2) "Beneficial use", unless otherwise provided, means:

21 (a) a use of water for the benefit of the appropriator, other persons, or the public, including but not
22 limited to agricultural (including stock water), domestic, fish and wildlife, industrial, irrigation, mining, municipal,
23 power, and recreational uses; or

24 (b) a use of water appropriated by the department for the state water leasing program under 85-2-141
25 and of water leased under a valid lease issued by the department under 85-2-141.

26 (3) "Certificate" means a certificate of water right issued by the department.

27 (4) "Change in appropriation right" means a change in the place of diversion, the place of use, the
28 purpose of use, or the place of storage.

29 (5) "Correct and complete" means that the information required to be submitted conforms to the
30 standard of substantial credible information and that all of the necessary parts of the form requiring the

1 information have been filled in with the required information.

2 (6) "Declaration" means the declaration of an existing right filed with the department under section 8,
3 Chapter 452, Laws of 1973.

4 (7) "Department" means the department of natural resources and conservation provided for in Title 2,
5 chapter 15, part 33.

6 (8) "Developed spring" means any artificial opening or excavation in the ground, however made,
7 including any physical alteration at the point of discharge regardless of whether it results in any increase in the
8 yield of ground water, from which ground water is sought or can be obtained or through which it flows under
9 natural pressures or is artificially withdrawn.

10 (9) "Existing right" or "existing water right" means a right to the use of water that would be protected
11 under the law as it existed prior to July 1, 1973. The term includes federal non-Indian and Indian reserved water
12 rights created under federal law and water rights created under state law.

13 (10) "Ground water" means any water that is beneath the ground surface.

14 (11) "Late claim" means a claim to an existing right forfeited pursuant to the conclusive presumption of
15 abandonment under 85-2-226.

16 (12) (a) "Nonconsumptive use" means a beneficial use of water that does not cause a reduction in the
17 source of supply and in which substantially all of the water returns without delay to the source of supply, causing
18 little or no disruption in stream conditions.

19 (b) The term does not include a use of water for a pond.

20 ~~(12)~~(13) "Permit" means the permit to appropriate issued by the department under 85-2-301 through
21 85-2-303 and 85-2-306 through 85-2-314.

22 ~~(13)~~(14) "Person" means an individual, association, partnership, corporation, state agency, political
23 subdivision, the United States or any agency of the United States, or any other entity.

24 ~~(14)~~(15) (a) "Political subdivision" means any county, incorporated city or town, public corporation, or
25 district created pursuant to state law or other public body of the state empowered to appropriate water.

26 (b) The term does not mean a private corporation, association, or group.

27 (16) (A) "Pond" means a lake-like body of water that is created:

28 ~~(a)~~(i) by a diversion of SURFACE water; and

29 ~~(b)~~(ii) by IMPOUNDMENT OF WATER BY artificial means or, INCLUDING excavation.

30 (B) THE TERM DOES NOT INCLUDE A BODY OF WATER THAT IS USED FOR WASTE TREATMENT, WASTE

1 REMEDICATION, MITIGATION OF WETLAND LOSS IN COMPLIANCE WITH APPLICABLE LAW, MUNICIPAL USE, STOCK USE, OR
2 STORAGE OF WATER.

3 ~~(15)~~(17) "Salvage" means to make water available for beneficial use from an existing valid appropriation
4 through application of water-saving methods.

5 ~~(16)~~(18) "State water reservation" means a water right created under state law after July 1, 1973, that
6 reserves water for existing or future beneficial uses or that maintains a minimum flow, level, or quality of water
7 throughout the year or at periods or for defined lengths of time.

8 ~~(17)~~(19) "Substantial credible information" means probable, believable facts sufficient to support a
9 reasonable legal theory upon which the department should proceed with the action requested by the person
10 providing the information.

11 ~~(18)~~(20) "Waste" means the unreasonable loss of water through the design or negligent operation of an
12 appropriation or water distribution facility or the application of water to anything but a beneficial use.

13 ~~(19)~~(21) "Water" means all water of the state, surface and subsurface, regardless of its character or
14 manner of occurrence, including but not limited to geothermal water, diffuse surface water, and sewage effluent.

15 ~~(20)~~(22) "Water division" means a drainage basin as defined in 3-7-102.

16 ~~(21)~~(23) "Water judge" means a judge as provided for in Title 3, chapter 7.

17 ~~(22)~~(24) "Water master" means a master as provided for in Title 3, chapter 7.

18 ~~(23)~~(25) (a) "Watercourse" means any naturally occurring stream or river from which water is diverted
19 for beneficial uses.

20 (b) ~~It~~ The term does not include ditches, culverts, or other constructed waterways.

21 ~~(24)~~(26) "Well" means any artificial opening or excavation in the ground, however made, by which
22 ground water is sought or can be obtained or through which it flows under natural pressures or is artificially
23 withdrawn."

24
25 **Section 2.** Section 85-2-329, MCA, is amended to read:

26 **"85-2-329. Definitions.** Unless the context requires otherwise, in 85-2-330 and this section, the
27 following definitions apply:

28 (1) "Application" means an application for a beneficial water use permit pursuant to 85-2-302 or a state
29 water reservation pursuant to 85-2-316.

30 (2) "Ground water" means water that is beneath the land surface or beneath the bed of a stream, lake,

1 reservoir, or other body of surface water and that is not immediately or directly connected to surface water.

2 ~~(3) "Nonconsumptive use" means a beneficial use of water that does not cause a reduction in the~~
3 ~~source of supply and in which substantially all of the water returns without delay to the source of supply, causing~~
4 ~~little or no disruption in stream conditions.~~

5 ~~——(4)(3) "Teton River basin" means the drainage area of the Teton River and its tributaries above the~~
6 ~~confluence of the Teton and Marias Rivers."~~

7
8 **Section 3.** Section 85-2-340, MCA, is amended to read:

9 **"85-2-340. Definitions.** Unless the context requires otherwise, in 85-2-341 and this section, the
10 following definitions apply:

11 (1) "Application" means an application for a beneficial water use permit pursuant to 85-2-302 or a state
12 water reservation pursuant to 85-2-316.

13 (2) "Ground water" means water that is beneath the land surface or beneath the bed of a stream, lake,
14 reservoir, or other body of surface water and that is not immediately or directly connected to surface water.

15 (3) "Jefferson River basin" means the drainage area of the Jefferson River and its tributaries above the
16 confluence of the Jefferson and Missouri Rivers.

17 (4) "Madison River basin" means the drainage area of the Madison River and its tributaries above the
18 confluence of the Madison and Jefferson Rivers.

19 ~~(5) "Nonconsumptive use" means a beneficial use of water that does not cause a reduction in the~~
20 ~~source of supply and in which substantially all of the water returns without delay to the source of supply, causing~~
21 ~~little or no disruption in stream conditions."~~

22
23 **Section 4.** Section 85-2-342, MCA, is amended to read:

24 **"85-2-342. Definitions.** Unless the context requires otherwise, in 85-2-343 and this section, the
25 following definitions apply:

26 (1) "Application" means an application for a beneficial water use permit pursuant to 85-2-302 or a state
27 water reservation pursuant to 85-2-316.

28 (2) "Ground water" means water that is beneath the land surface or beneath the bed of a stream, lake,
29 reservoir, or other body of surface water and that is not immediately or directly connected to surface water.

30 ~~(3) "Nonconsumptive use" means a beneficial use of water that does not cause a reduction in the~~

1 ~~source of supply and in which substantially all of the water returns without delay to the source of supply, causing~~
2 ~~little or no disruption in stream conditions.~~

3 ~~———(4)(3)~~ "Upper Missouri River basin" means the drainage area of the Missouri River and its tributaries
4 above Morony dam."
5

6 NEW SECTION. **Section 5. Notification to tribal governments.** The secretary of state shall send a
7 copy of [this act] to each tribal government located on the seven Montana reservations and to the Little Shell
8 band of Chippewa.

9 - END -